

REMARKS

Reconsideration is respectfully requested in view of any changes to the claims and the remarks herein. Please contact the undersigned to conduct a telephone interview in accordance with MPEP 713.01 to resolve any remaining requirements and/or issues prior to sending another Office Action. Relevant portions of MPEP 713.01 are included on the signature page of this amendment.

In the referenced Advisory Action dated November 15, 2007 the Examiner did not enter Applicants' Fourteenth Supplementary Response dated 11-25-2006. The Examiner states the "Remarks/Exhibits have not been considered as such were not timely filed. See 37 C.F.R. § 41.33 and MPEP 1206 ..."

37 C.F.R. § 41.33 states:

§ 41.33 Amendments and affidavits or other evidence after appeal.

(a) Amendments filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) and prior to the date a brief is filed pursuant to § 41.37 may be admitted as provided in § 1.116 of this title.

Since the Appeal Brief was filed 12-01-2006 and the Fourteenth Supplementary Response was filed 11-25-2006, the Fourteenth Supplementary Response "may be admitted as provided in § 1.116" of 37 C.F.R.

37 C.F.R. § 1.116 states:

§ 1.116 Amendments and affidavits or other evidence after final action and prior to appeal.

(e) An affidavit or other evidence submitted after a final rejection or other final action (§ 1.113) in an application ... but before or on the same date of filing an appeal (§ 41.31 or § 41.61 of this title), may be

admitted upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented.

Applicants respectfully request that Fourteenth Supplementary Response dated 11-25-2006 be entered or this Sixteenth Supplementary Response be interred. The following is “a showing of good and sufficient reasons why [this] ...evidence is necessary and was not earlier presented.”

Attachments A and B of the Fourteenth Supplementary Response and this Sixteenth Supplementary Response are directed to background information that was well know to persons of ordinary skill in the art prior to Applicants’ invention and is information that is know of should be known to the Examiner of the present application. An Examiner of a patent application handles a narrower filed of technical subject matter than a panel of the Board of Appeals that reviews an applicant’s appeal. Applicants submitted the Fourteenth Supplementary Response and this Sixteenth Supplementary Response to provide the panel of the Board of Appeals reviewing this appeal basic knowledge known to persons of ordinary skill in the art and which is know or should be know to the Examiner. Applicants believe that this basic information is necessary since it will asset the Board in rendering a fair and equitable decision. This information was not earlier presented since information well know to persons of skill in the art does not have to be provided in a patent application nor during prosecution unless it is requested by the Examiner or is necessary to respond to an issue that arises during prosecution.

Attachment A is provided for back ground information. Attachment A is the table of contents, the Preface and Chapter 1 of the book “Cryogenic Engineering” by B. A. Hands, Copyright 1986, Published by Academic Press, Inc. Chapter 1 is entitled “Survey of Cryogenic Engineering.” This is being provided to show the general state of the art of apparatus for controlling temperature to be in the low temperature ranges as used in superconductivity. Superconductivity was

discovered in 1911 and apparatus to control temperature were well known in the art prior to Applicants' earliest filing date.

Attachment B is pages E-85 to E-100 of the "CRC Handbook of Chemistry and Physics 59th Edition 1978-1979. These pages list superconductive elements and materials known in 1979 many years before Applicants' discovery that lead to the 1987 Nobel Prize in Physics. These materials have a T_c less than 26 K. After Applicants' discovery persons of ordinary skill in the art would use this basic well known information to look for species of high T_c materials.

Please charge any fee necessary to enter this paper and any previous paper to deposit account 09-0468.

Respectfully submitted,

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